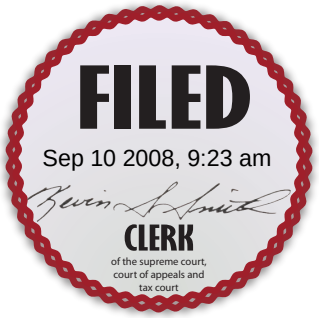

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IN THE
COURT OF APPEALS OF INDIANA

JOSHUA RICHEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0802-CR-140
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice Jr., Judge
Cause No. 49G02-0708-FA-154755

September 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following his guilty plea and conviction for two counts of Child Molesting as Class B felonies,[1] Appellant-Defendant Joshua Richey challenges the trial court's sentencing him to two concurrent sentences of eleven years, with three years suspended on each. Upon appeal, Richey claims that the trial court abused its discretion in considering his alleged position of trust as an aggravator. Richey also claims that his sentence is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual bases entered during the plea hearing, on or about August 1, 2006, and July 9, 2007, Richey engaged in sexual intercourse with S.W., a thirteen-year-old minor, at his home located at 1427 Oliver Avenue in Marion County. (Tr. 34-35) Additionally, on or about August 1, 2006, and July 9, 2007, Richey engaged in oral sex with S.W., also at his home. (Tr. 34-35)

On August 1, 2007, the State charged Richey with six counts of child molesting, as Class A felonies, and one count of child molesting, as a Class C felony. (Pet. App. 17-19) On January 8, 2007, Richey entered into a plea agreement in which he agreed to plead guilty to two counts of Class B felony child molesting as alleged in an amended information filed January 16, 2008. (Pet. App. 42-45) In exchange, the State agreed to dismiss his six Class A felony child molesting counts and one Class C felony count, as well as two other unrelated pending charges. (Pet. App. 42-45) As an additional term of the plea agreement,

[1] Ind. Code § 35-42-4-3 (2007).

the parties agreed to a sentencing cap of twenty years. (Pet. App. 42-45) On January 16, 2008, Richey entered his guilty plea, which the trial court accepted. (Tr. 56) The trial court subsequently sentenced Richey to two concurrent terms of eleven years, with three years suspended to sex offender probation on each. (Tr. 56) Richey now appeals.

DISCUSSION AND DECISION

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). Nothing in the amended statutory regime changes this standard. *Id.* So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. *Id.* An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.* The trial court may abuse its discretion by entering a sentencing statement that explains reasons for imposing a sentence including a finding of aggravating and mitigating factors if any, but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. *Id.* at 490-491.

Richey first challenges the trial court's alleged consideration of the aggravating factor that he violated a position of trust with his victim. Richey argues that the mere fact that certain members of their families married is an

inadequate basis for concluding he was in a position of trust with S.W., especially in light of the fact that the marriage at issue did not occur until after the offenses had been committed. In its sentencing statement, the trial court stated the following:

> With regard to the nature and circumstances of the crime committed. I hate to sit up here and say that, unfortunately, I see a lot of this, you know. And certainly I think he violated a position of trust in that he was – he knew this young lady through family because, as he stated, [her] mother, I believe married your uncle. Is that correct? Is that the family relationship?
>
> Richey: Yes, that was after all this had happened.
> The Court: I'm sorry.
> Richey: That was after all this had happened.
> The Court: After all this – really?
> Richey: Yeah.
> The Court: Okay, interesting.
> Richey: I went to their wedding.
>
> Well – so to that extent. I mean, I – and I think you would agree with me [Prosecutor Jefferson] that many of the child molest cases that we see in this court, unfortunately, involve family members whether they're – in fact, I'm getting ready to sentence another one where there is actually blood relations. So I think that the aggravating situation with regard to this is, I think, clearly, Mr. Richey knew what he was doing was wrong and nevertheless, there were multiple occasions of sexual abuse. So – but once again, I give that minimal weight too.

It is unclear from this record that the trial court relied on Richey's alleged position of trust as an aggravating factor in its sentencing. To the extent that it did, it appears that Richey and the victim knew each other through relatives who ultimately married, suggesting their relationship was not too attenuated to create such a position of trust. Regardless of whether the trial court relied on Richey's alleged position of trust as an aggravating factor, Richey received concurrent

sentences of eleven years, with only eight of each executed, which is two years below the ten-year advisory sentence for Class B felonies. *See* Ind. Code § 35-50-2-5. Even if this factor were not considered, the trial court's sentence was based upon the additional aggravating factors of his juvenile history, which included true findings for burglary and fleeing, and his substance abuse problem, none of which Richey challenges. Given these factors and the record, we are convinced that the trial court would have imposed the instant sentence regardless of the challenged aggravators. *See Anglemyer*, 868 N.E.2d at 491.

Richey also challenges the appropriateness of his sentence. The appellate court retains the authority under Indiana Appellate Rule 7(B) to review a sentence for appropriateness. *Id*. Indeed, even where the trial court has been meticulous in following the proper procedure in imposing a sentence, we still may exercise our authority under Appellate Rule 7(B) to revise a sentence that we conclude is inappropriate in light of the nature of the offense and the character of the offender. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005) (citations omitted). The defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

In the instant case Richey has failed to satisfy his burden that his sentence is inappropriate in light of the nature of his offenses and his character. With respect to the nature of Richey's offenses, excerpts from S.W.'s diary demonstrate that Richey, who was twenty-four, involved S.W., who was thirteen, in an

intensive and sexual relationship, causing S.W. to place trust and loyalty in him, and subjecting her to both physical and emotional harm. Regardless of whether Richey's offenses involved physical force or injury to S.W., their age difference demonstrates the emotional forcefulness of his action and they will no doubt have serious and lasting effects on S.W. As for Richey's character, his juvenile history, while minimal, involves true findings for burglary and fleeing and shows that he has a certain ongoing disregard for the law. More significantly, his fondness for minor girls half his age reflects poorly on his character. While Richey's admission to the crime reflects positively on his character, this remedial measure does not erase the impact of his crime such that an aggregate eleven-year sentence, with eight years executed, can be said to be inappropriate.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.